

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Case No. _____

FLOYD LEE BROWN, by and through his)
Guardian Ad Litem, Anthony Giordano,)
)
)
Plaintiff,)
)
)
v.)
)
)
ANSON COUNTY, ROBERT LUTHER)
POPLIN, JR., in his individual capacity,)
SHERIFF TOMMY ALLEN, in his)
individual and official capacities, SHERIFF)
JAMES SELLERS, in his individual and)
official capacities, JOHN and JANE DOES)
1-10, in their individual capacities, and)
RICHARD and ROBERTA ROES 1-10, in)
their individual capacities,)
)
)
Defendants.)
)

NOTICE OF REMOVAL

Defendants Anson County, Robert Luther Poplin, Jr. (“Poplin”), Sheriff Tommy Allen (“Allen”), and Sheriff James Sellers (“Sellers”) (collectively, the “Named Defendants”), give notice pursuant to 28 U.S.C. § 1446 that they hereby remove the above-captioned case presently pending in the Superior Court Division of the General Court of Justice of Mecklenburg County, State of North Carolina, which bears the File No. 10-CVS-20406, to the United States District Court for the Western District of North Carolina (Charlotte Division).

Removal is hereby authorized by 28 U.S.C. § 1441 and is based on the United States District Court’s original subject matter jurisdiction pursuant to 28 U.S.C. § 1331. In support of this Notice of Removal, the Named Defendants show the Court the following:

1. This case was commenced by the filing of a Complaint in the Superior Court Division of the General Court of Justice of Mecklenburg County, State of North Carolina (the "State Court"), on or about September 30, 2010, against the Named Defendants.

2. The undersigned counsel accepted service for Anson County, Poplin, and Allen on November 1, 2010. The Complaint was served on Sellers by certified mail on or about October 15, 2010. Pursuant to 28 U.S.C. § 1446(a), a copy of the Complaint filed in the State Court with respect to the above-captioned case is attached to this Notice of Removal as Exhibit 1. Attached as Exhibit 2 are the electronic case opening documents required to be served on the non-removing party. Attached as Exhibit 3 are the other documents filed in the State Court with respect to the above-captioned case.

3. The time in which the Named Defendants are required to remove this action pursuant to 28 U.S.C. § 1446 to the United States District Court for the Western District of North Carolina has not yet expired.

4. In his Complaint, the Plaintiff alleges that the Named Defendants violated 42 U.S.C. § 1983. Specifically, Plaintiff alleges:

- a. Defendant Poplin violated Plaintiff's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution;
- b. Defendants Poplin, Allen, and Sellers violated Plaintiff's right to access to the courts under the First and Fourteenth Amendments to the United States Constitution;
- c. Defendant Poplin violated Plaintiff's right to be free from unreasonable seizure under the First and Fourteenth Amendments to the United States Constitution; and

d. Defendants Anson County, Allen, and Sellers are liable for the above-referenced constitutional violations pursuant to *Monell v. Dep't of Social Services of City of New York*, 436 U.S. 658, 98 S.Ct. 2018 (1978).

5. Because Plaintiff seeks to recover damages for alleged violations of his rights under the United States Constitution, this Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

6. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal will be filed with the Clerk of the State Court, and a copy will be served on counsel for the Plaintiff.

WHEREFORE, the Named Defendants hereby remove the above-captioned action from the State Court to the United States District Court for the Western District of North Carolina, Charlotte Division, and request that further proceedings be conducted in this Court as provided by law.

Respectfully submitted, this the 9th day of November, 2010.

s/ Sean F. Perrin, Esq.
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Attorney for Defendants

CERTIFICATE OF SERVICE

I certify that I have this day served the party in this action with a copy of the foregoing **NOTICE OF REMOVAL** by depositing a copy of the same with the United States Postal Service, first-class postage prepaid and addressed as follows:

David S. Rudolf, Esq.
Rudolf Widenhouse & Fialko
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Dated: November 9, 2010

s/ Sean F. Perrin, Esq.
Sean F. Perrin